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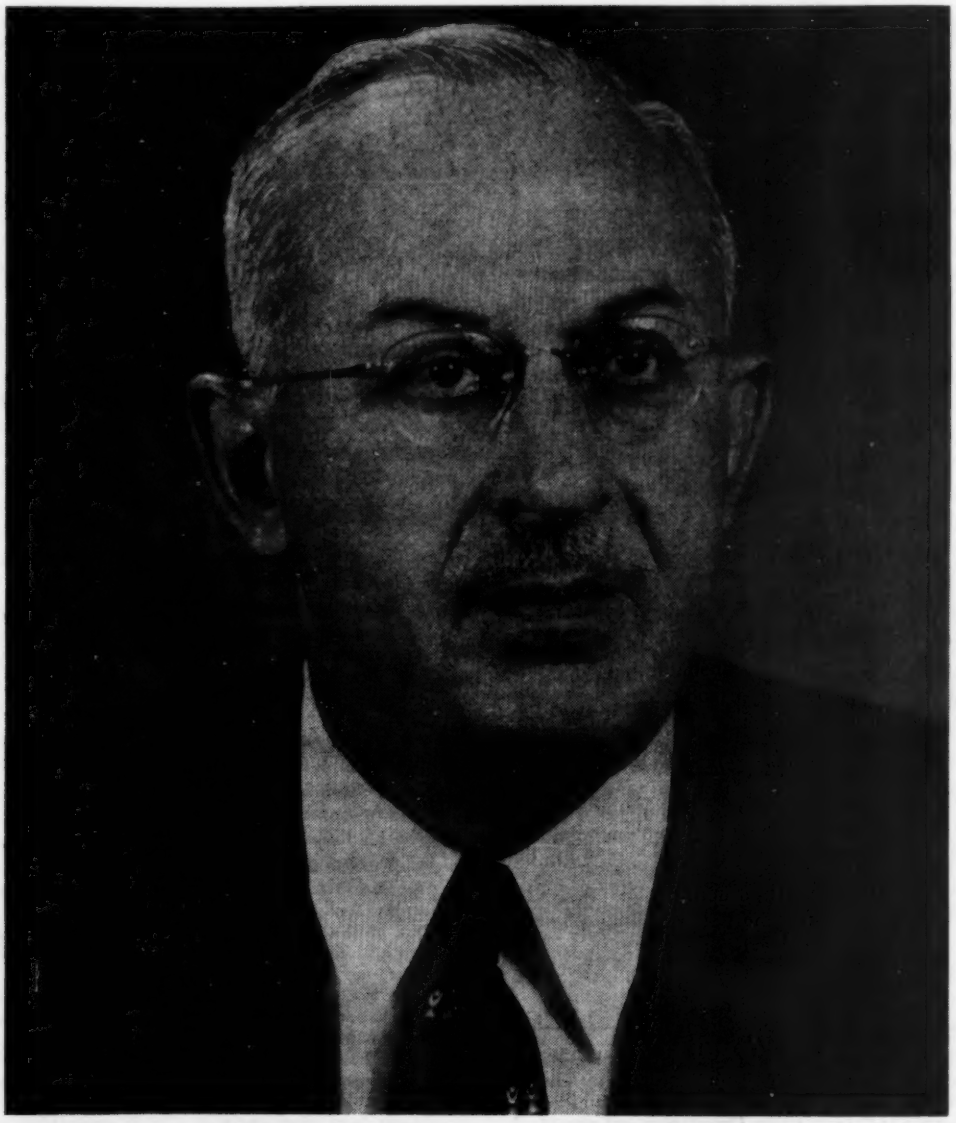

JUDGE SIMON E. SOBELOFF

RECIPIENT OF THE DECALOGUE AWARD FOR 1958

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IN THIS ISSUE

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 179 West Washington Street, Chicago 2, Illinois.

ACCLAIM SELECTION OF JUDGE SIMON E. SOBELOFF

Demands for reservations for The Decalogue Society's twenty-fourth Annual Merit Award dinner which will be held in the Palmer House Grand Ballroom, on Saturday February 28th, continue at a brisk rate. Chairman of the Arrangements committee Meyer Weinberg, and Marvin Victor chairman of the Ticket committee announce that the selection of Judge Simon Sobeloff as the recipient of The Decalogue Society Merit Award for 1958 has met with the hearty approval of the legal profession and the entire community. The price of admission is $10.00 per person.

Orders for tickets should be sent to the offices of The Decalogue Society at 180 West Washington Street, Chicago 2, Illinois.

$50,000 Fellowship Fund For Hebrew Law School

In keeping with a recent resolution adopted by our Board of Managers to create a $50,000 permanent endowment fund to provide annual fellowship at the Hebrew University of Jerusalem Law School, President Alec E. Weinrob appointed the following committee to implement the purposes of the new project: Eugene Bernstein, chairman, Morris S. Bromberg, Nathan M. Cohen, Jack E. Dwork, Joseph S. Grant, Louis Z. Grant, Solomon Jesmer, Senator Marshall Korshak, Judge Irving Landesman, Oscar M. Nudelman, Nathan H. Schwartz, David F. Silverzweig, Martin M. Victor, and Meyer Weinberg.

Member Nathan H. Schwartz is president of the Chicago chapter, American Friends of Hebrew University.

LAW DAY U. S. A. ON MAY FIRST

The American Bar Association announces that the second nation-wide observance of Law Day U.S.A. will be held on May 1st, 1959 and notes:

. . . The first LAW DAY U. S. A. observance on the same date this year was immensely successful in making the American people more keenly aware of the place of law in their lives. Wherever local programs were held in the schools, in courtrooms or city halls, before service clubs and civic organizations of all kinds, bar officials were enthusiastic in their reports as to the results, in terms of favorable public interest and response.

On the basis of the experience thus gained, and with the early start in planning now possible, we confidently hope that still more bar associations will plan to cosponsor local observances in 1959 in cooperation with city and school officials, and laymen's organizations. The leadership in this effort must come from local bar associations, as it did last year. . . .

SIMON E. SOBELOFF - 'LIBERTY AND LAW— ONE AND INSEPARABLE'

By BENJAMIN WEINTROUB, Editor

In striving for liberty we cannot achieve the victory for one and for all and then rest. Ceaselessly and continuously we must dedicate and re-dedicate ourselves to the defense of those moral foundations of our society. But each advance makes the next step a little easier.
—*Simon E. Sobeloff.*

The bald biographical facts concerning Judge Simon E. Sobeloff, the recipient of The Decalogue Society of Lawyers Award of Merit for 1958, as taken from *WHO'S WHO IN AMERICA, 1958-59,* are as follows:

SOBELOFF, SIMON E., judge; born December 3, 1894; son of Jacob and Mary (Kaplan) S.; University of Maryland, 1915; married Irene Ehrlich, May 19, 1918; children —Evva, Ruth. Assistant city solicitor, Baltimore, 1919-1923, deputy city solicitor, 1927-1931, city solicitor, 1943-1947; United States attorney for the District of Maryland, 1931-1934; resumed law practice; chairman of Commission on Administry; Organization of the State of Maryland, 1951-1952; chief judge of the Maryland Court of Appeals, 1952-1954; solicitor-general of the United States, 1954-1955; judge of the United States Court of Appeals for the Fourth Circuit, 1956.—Republican.

The story of the early personal and later public life of this Baltimore Jewish boy, a son of first-generation immigrants, matches in intensity of purpose and resolution most of the popular stories, at the turn of the century, about youth dedicated to make for itself a place in the sun in America. There come to mind works of fiction, already land-marks in Jewish-American literature, which depict in terms of dynamic incident and speculative inquiry the harshness of environment and the visions that drove on the children of the poor, of ghettos and slums, toward self-recognition and success. One thinks of *The Rise of David Levinsky* by Abraham Cahan, *The Old Bunch* by Meyer Levin, *My Son, the Lawyer* by Henry Denker, *When I Was a Boy in Boston* by Charles Angoff, and of other books of like import and subject-matter. Each of these volumes dwelt upon the brutalizing effect of the quest for fulfillment and triumph upon both its chief and minor characters and the sacrifices and compromises the goals sought had exacted; and though the Judge's early beginnings were hard,

As a boy he worked during the summer for two lawyers and a real estate man who agreed to pay him a weekly pittance of two dollars. When pay-day came, he received only one dollar and ninety-eight cents for the week because each of his three employers was willing to pay sixty-six cents but none was willing to pay the extra cent. When Simon came home two cents short of two dollars, his mother said, "Simon, I did not know you were going out with a girl."—*The Hon. Herbert Brownell, Jr., in Hearings Before the Committee on the Judiciary, Washington, D. C., 1956.*

He was always uncompromising in his early, as well as in his later, public life in maintaining standards of decency. The following is quoted from the Report of the Senate Committee which conducted the hearings on his nomination as Federal Circuit judge:

A witness before the committee complained of the nominee's failure to sign the Government's brief or to argue in Dr. John P. Peters' subversion case because his personal views were not in accord with the official position of the Attorney General. Peters was professor of medicine at the Yale Medical School, and a part-time consultant of the United States Department of Health, Education, and Welfare. This is not the first instance of a Solicitor General's declining to sign a brief of the Government when he did not believe in the soundness and justice of the case. Predecessors have on occasion done likewise, withdrawing from the case to permit others to handle it who found themselves more in accord with the asserted position of the Government. In some instances Solicitors General have gone further and confessed error on behalf of the United States.

The future United States judge's first "political" appointment came as a result of a speech delivered by the boy orator at the Baltimore 1907 mayoral campaign. It was heard by the then Congressman John Kronmiller, who was so impressed that he gave young Simon an appointment as a page boy in the House of Representatives. From then on his rise was rapid: court bailiff, secretary to a judge, assistant city solicitor, deputy city solicitor, Chief Judge, and Solicitor General. But Sobeloff's fame, until he became Chief Judge, rested more on his role of adviser to three mayors and Governor McKeldin, rather than as an office holder in his own right. The Baltimore *Sun* described him as "first minister in Governor McKeldin's cabinet."

And never was his genius for both political sagacity and statesmanlike "reality" more apparent than in his position during the eighteen months he served as chairman of the Commission on Re-organization for the State of Maryland, a work which has been universally accepted as a monumental achievement:

A commission of twelve men and their technical experts, popularly known as the Sobeloff Commission, conceived and presented a new type of budget, which the Legislative Council and the Legislature approved and the State electorate ratified. The odds were against the adoption of the new budget system; but in the end the necessary constitutional amendment went through so smoothly that people hardly remembered what a great achievement it was. When Simon Sobeloff became Chief Judge, he stepped down from the chairmanship of the Commission with the acclaim of the press and the public for a job well done.—*THE JEWISH TIMES, Baltimore, Md., Feb. 5, 1954.*

No biography of Judge Sobeloff could do justice to the man's character and solid contributions to the field of law, high judicial standards, and concepts of civic responsibility without including a study of the hearings before the Committee on the Judiciary of the United States Senate on the nomination of Simon E. Sobeloff to the post of the Maryland United States Circuit Judge, Fourth Circuit. The hearings lasted for over two months in 1956. The chief objectors to his nomination were Senators James O. Eastland of Mississippi and Olin D. Johnston of South Carolina. These two Southern senators interrogated the Judge closely on his interpretation both of the 1954 decision of the United States Supreme Court, dealing with segregation, and of the Fourteenth Amendment to the United States Constitution. Judge Sobeloff was forthright and brilliantly lucid in his pronouncements on the Bill of Rights. Part of the record at these hearings was his quoted statement:

> Who guards our freedoms? Not the courts alone; in this area their function, which I hold in reverence, is the limited one of deciding what is constitutionally permissible. Strive as they may to square law with justice, by and large theirs is not the duty or the right to censor the wisdom of the policies made by Congress or legislatures, or even in many instances the acts of administrators. Although the courts have on numerous important occasions made historic contributions to freedom's cause, informed laymen as well as lawyers know that courts are not empowered to set aside every law of which they disapprove, even when they feel that it may lead to injustice. Not everything that is unwise or unfair is necessarily unconstitutional.—*Address before the Ninth National Conference on Citizenship, Washington, D. C., 1954.*

The opponents of his confirmation for the office recalled his attack on the immigration policies of the country as laid down by the McCarran-Walter Act. He said in a speech before the National Conference on Citizenship (1955) in Washington, D. C.:

> While recognizing the good motivations of those who enacted the present laws, I respectfully submit that these provisions are working unnecessary hardships without compensating advantages to the Nation. They go far beyond the needs of security or economic protection. . . . The age-old, humiliating policy of discrimination along color lines in the Armed Forces has been practically eliminated. It is noteworthy and deeply reassuring to us, as we contemplate other areas, that despite numerous warnings that this policy would not work, it is working, and there have been no untoward incidents.

Some of this nation's outstanding leaders in civil life, in law, and in industry appeared before the Senate committee to testify as to the man's integrity, lofty purposes, and high ideals. The following is quoted from an address by Philip Klutznick, president of the B'nai B'rith:

> Simon Sobeloff springs from a tradition which even in the ancient days, when royalty and tyranny ruled more than their share of the world, expressed its appreciation for the importance of government and its role in the lives of men.

From a quoted speech at these hearings by Herbert Brownell, Jr., Attorney General of the United States, we find the following:

> In nominating Simon Sobeloff as a judge of the Court of Appeals for the Fourth Circuit, the President has selected a man who fulfills the qualifications of maintaining loftiest standards in the administration of justice throughout the land. In his hands, liberty and law will be—as they must be in any ordered society—one and inseparable.

Judge Sobeloff has been prominently active in Jewish affairs on a national level. He is former president of the Board of Jewish Education and Director of the National Association of Jewish Education; former president of Menorah Lodge, B'nai B'rith; one of the founders and first president of the Baltimore branch of the American Jewish Congress, and formerly a national vice-president; former president of the Baltimore Jewish Council, and now a member of its Board; board member of Zionist Organization of America; board member of Associated Jewish Charities of Baltimore, and trustee of Brandeis University.

He is a much sought-after speaker at public meetings, conferences, and dinners dealing with the sale of Israel Bonds, appeals for succor from abroad, religious and educational councils, and Jewish organizations seeking mass support in their Americanization programs. In a speech on the occasion of the honoring of Ambassador and Mrs. Abba Eban, he declared:

> It has been interesting to me to note that Israel is duplicating a chapter of early American history. The infant United States sent Benjamin Franklin to France to negotiate a loan and to induce foreign investors to send money to America. He did for our Republic what the bond drive seeks to accomplish for Israel in America today. The security which Israel offers is no less stable and its good faith no less dependable than that of the United States in the uncertain days of its beginning.—*Israel Bond Drive (dinner meeting) 1955, New York.*

In his response to the presentation to him of the "Medal of the President" of B'nai B'rith, he said:

> American nationalism, of course, makes its demands of complete political loyalty. American patriotism, however, does not seek to stifle diversities in religion or the associated diversities in ancestral traditions and group living. The beginning of faithfulness is to be true to one's self. When our forebears were naturalized they renounced allegiance to all foreign princes, states, and sovereignties, but they were not told to empty their hearts of sentiment and compassion and memories. To us these precious values denote strength, not weakness.—*Address before National B'nai B'rith Convention, 1955, Washington, D. C.*

At a meeting of the American Jewish Congress, Judge Sobeloff said:

> Americans understand by freedom not merely the right to be present and conform. The essence of freedom is to be free to oneself without being molested. And this is only the beginning of liberty. Liberty will not be fully attained in our society until men and groups can feel free to be orthodox or heterodox, conformist or non-conform-

ist, without danger of discrimination in employment opportunity, or restriction in the place where they may live, or even of suffering ostracism.—*Biennial Convention, American Jewish Congress, 1956, New York.*

For his outstanding contributions to our national life Judge Sobeloff was awarded the honorary degree of Doctor of Humane Letters by the Hebrew Union College and the Jewish Institute of Religion; also an honorary LL.D. by the University of Maryland and Morgan State College, and a Doctor of Letters by the New School of Social Research.

Judge Sobeloff's public life as a lawyer, a judge, and a Jew, has been lived in the finest tradition of true Americanism. His humanitarianism and devotion to Jewish ideals and to Israel make for no duality of interests. They stem from loyalty to mankind's noblest precepts of justice and right. To him there may be applied the very words that he uttered when honoring the memory of Louis Marshall:

. . . He was a great Jewish layman, a man who lived the words that he studied. His every action was a commentary on the Torah, and the life of this layman is testimony to the lasting and beneficent truth preached by the rabbis and teachers, "It is a tree of life to those who cling to it. . . ."—*Address before the Jewish Theological Seminary of America, 1956.*

LEGAL EDUCATION COMMITTEE

The most successful legal education program in the history of The Decalogue Society is underway. The lectures, held once a week, on Wednesdays at 1:00 P.M., after lunch, at the Society offices, have attracted record attendance. On occasion, there have been overflows.

This year the legal education program of The Decalogue Society of Lawyers, under the chairmanship of past president Elmer Gertz, is a wholly practical one. It includes more lectures than the Society has ever previously presented. In choosing each subject and speaker, we have asked ourselves, "Is this a subject that concerns the workaday lawyer, something that can add, so to speak, to his stock in trade and bring practical results to him? And is this lecturer the man to speak in terms that the non-specialist can follow?"

As this issue of The Decalogue Journal goes to press, the following scheduled lectures remain:

February 18, 1959, at 1:00 P.M.
WHEN YOU OR YOUR CLIENT ARE CALLED BEFORE A GRAND JURY
Irwin Bloch

February 25, 1959, at 1:00 P.M.
WHAT EVERY LAWYER SHOULD KNOW ABOUT ADMIRALTY LAW
Zeamore A. Ader

March 4, 1959, at 1:00 P.M.
SUMMARY JUDGMENTS AND DECREES
Elmer Gertz

March 11, 1959, at 1:00 P.M.
CURRENT PRACTICAL PROBLEMS IN MATRIMONIAL LAW
Meyer Weinberg

March 18, 1959, at 1:00 P.M.
WHAT YOU SHOULD KNOW ABOUT THE LAWS WITH RESPECT TO PURE FOODS AND DRUGS
Samuel Shkolnik

March 25, 1959, at 1:00 P.M.
WHEN IS AN ORDER APPEALABLE?
Harry G. Fins

In addition, the Legal Education committee is hoping to present some additional lectures when the present series is completed, including at least one talk by Mrs. E. Anne Mazur on workmen's compensation cases.

The following lectures have already been given under the auspices of the committee.

HOW TO DRAFT A BUSINESS LEASE
Eli E. Fink

PRETRIAL DISCOVERY TECHNIQUES
Leo Wykell

PRESENTATION OF MEDICAL EVIDENCE
Harold Liebenson

WHAT EVERY LAWYER SHOULD KNOW ABOUT THE NEW TAX LAWS OF 1958
Paul G. Annes

THE NEW SUPREME COURT RULE WITH RESPECT TO EXAMINATION OF JURORS
Harry Busch

OVERLOOKED OPPORTUNITIES IN PERSONAL INJURY CASES
Fred Lane

CROSS-EXAMINATION OF DEFENDANTS' MEDICAL WITNESSES
Leo Karlin

LATEST WRINKLES IN PROBATE LAW
Nat Kahn

THE ATTORNEY-CLIENT AND ACCOUNTANT-CLIENT PRIVILEGE
Bernard Sokol

DEDUCTIONS BY LAWYERS ON INCOME TAX RETURNS
Joseph Solon

NEW ZONING ORDINANCE AND CHANGED CONCEPTS IN DECISIONS
Louis Ancel

It is expected that a digest of some of the lectures will appear in The Decalogue Journal. Elmer Gertz, chairman, urgently solicits the views of the membership for the purpose of planning of future lectures.

FINS ON JUDICIAL REFORM

Member of our Board of Managers Harry G. Fins addressed the Harvey-Calumet Bar Association on January 14th, on "Illinois Judicial Reform Legislation Without Constitutional Amendment." A condensation of Mr. Fins' address, it is expected, will appear in an issue of The Decalogue Journal.

THE THREE-JUDGE FEDERAL DISTRICT COURT

By ROBERT J. NYE

Member Robert J. Nye was formerly trial attorney for the U. S. Department of Labor in Washington, D. C., and Boston, and editor in chief of the De Paul Law Review. He has written, among other publications, for the University of Michigan Law Review, the New York University Conference on Labor, and periodicals of The Institute of Judicial Administration, Inc. Mr. Nye is senior law clerk to U. S. District Judge Julius H. Miner.

This article reviews the jurisdiction, composition and procedure of a special court, created by Congress as the exclusive Federal forum for pleas in equity to restrain official enforcement of laws assailed as offensive to the Constitution.

On September 3, 1958, Warren Olney III, Director of the Administrative Office of the United States Courts, submitted his first Annual Report[1] to the Chief Justice of the United States and to the members of the Judicial Conference of the United States.[2] Included in the Report is a distribution table of Three-Judge District Court cases heard during the fiscal year July 1, 1957 to June 30, 1958,[3] which is reproduced in the margin.

The total of 47 cases heard seems insignificant when compared with the total of 58,464 civil cases filed during fiscal 1958 in the 86 district courts.[4] But its statistical insignificance is eclipsed by the fact that the cases heard by the Three-Judge District Court are among the most important in securing the rights guaranteed by our Constitution, and in maintaining the dual sovereignty principle which is basic to the existence of a federation of united States.[5]

That the Court exists is a compliment to the wisdom of the Congress. For in essence, the Court was established as a safeguard against possible abuse of the powers granted to all branches of government—judicial, as well as legislative and executive—in both State and Federal spheres.

The novel jurisdiction, composition and procedure of the Court are specifically prescribed by statute. The Court is not convened merely to hear a problem case. In the words of two of the more important authorities in the field of Federal practice, "It is important to note the distinction between statutory three-judge courts and a district court of three judges convened to hear a case because of its difficulty or importance."[6]

Generally, the jurisdiction of the Court extends to the hearing and disposition of suits to enjoin the enforcement, operation or execution of statutes alleged to be repugnant to the Constitution (28 U.S.C.A. §§2281-2282). The single district judge is specifically deprived of power to hear and decide this class of cases, since the jurisdiction of the Court is exclusive in the Federal court system (*Query* v. *United States*, 316 U.S. 486 (1942)). However, because the Court is convened only for purposes of a particular case, the petition for an injunctive decree and the application for hearing by the Court must first be presented to the district judge to whom the case is originally assigned. His duty requires him to determine whether the suit indeed presents an issue within the sole competence of the Court. If he errs by refusing to convene the Court, mandamus may issue from the Supreme Court (*Ex parte Bransford*, 310 U.S. 354 (1940)). There is but one exception to this termination-of-power concept. If the petition includes an application for an interlocutory injunction, the district judge may grant a temporary restraining order to prevent irreparable damage which—unless previously revoked by him—may remain in force until the hearing and determination by the Court, but no longer (28 U.S.C.A. §2284(3)).

ROBERT J. NYE

The mere fact that a district judge has referred the case to the Court does not foreclose the latter from determining that it is without jurisdiction. As with all other proceedings by the Court, the concurrence by two members is sufficient to dispose of a jurisdictional issue.

The Court is composed as follows:

> The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding. [28 U.S.C.A. §2284(1)]

The Three-Judge District Court, still a district court, must comply with most of the procedural rules established for district courts. But there are certain specific provisions applicable only to the Court:

> In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application. [28 U.S.C.A. §2284(4)]

> Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

> A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. [28 U.S.C.A. §2284(5)]

Where the jurisdiction of the Court has been properly invoked, every question in the case, local as well as Federal, can be considered (*Railroad Commission of California* v. *Pacific Gas & Electric Co.*, 302 U.S. 388 (1938)). This power to completely dispose of all material issues necessarily in the case is not unique to the Court. Again, all general rules of procedure relevant to the hearing and disposition of equity cases are equally applicable to proceedings of the Court (see *Toomer* v. *Witsell*, 334 U.S. 385 (1948), rehearing denied 335 U.S. 837). Ancillary proceedings need not be heard by the full Court—a single judge is sufficient (*Public Service Commission of Missouri* v. *Brashear Freight Lines, Inc.*, 312 U.S. 621 (1941), rehearing denied 313 U.S. 598).[7]

I

State Statutes and Orders

Just as a State statute may be alleged unenforceable as between private litigants on grounds that it is unconstitutional, so may State executive action to enforce a State statute be alleged wrongful on constitutional grounds. In fact, suits to enjoin enforcement of allegedly unconstitutional State statutes were the prime congressional concern leading to the institution of the Three-Judge Court. The congressional debates clearly disclose that the Court was conceived to provide a more complete consideration of State statute constitutionality issues than it was felt could be obtained by presentation to a single district judge.

The first section of the chapter requiring three-judge courts in statute-enforcement injunction cases reads:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. [28 U.S.C.A. §2281]

This provision, the Supreme Court has observed, must be strictly construed (*Phillips* v. *United States*, 312 U.S. 246 (1941)). In light of some of its own construing decisions, however, one may wonder if this declaration is not similiar to that in *Thornhill* v. *Alabama* (310 U.S. 88 (1940)), where the Supreme Court unequivocally and unconditionally upheld the right to picket, and then went on in later cases to temper that declaration with a well-organized profusion of exceptions. In any case, the history and purpose of the section is well documented, and because appeal from decisions of the Three-Judge Court is direct to the Supreme Court (28 U.S.C.A. §1253), so too, are the exceptions.

Clearly, in order that the Court may act, the constitutional ramparts must be attacked. The courts look askance upon feints, however. The constitutional question must be of substance and not merely raised as a formal banner or byword.[8] Close examination of a case is thus required, since the rule is not always easily applied, nor the probable judicial approach to a particular case accurately predictable. Several important points should be stressed.

The constitutionality of a State statute is brought into question when it is alleged to impinge upon the pre-emptive provisions of Federal legislation (see *Parker* v. *Brown*, 317 U.S. 341 (1943)).[9] Thus, a proper jurisdictional basis is laid whenever the superiority of Federal law under the "Supreme Law of the Land" clause of the Constitution (Article VI, Clause 2) is asserted as grounds for the invalidity of a State statute.

When submitted to the scrutiny of the Court, the hierarchy of legislation is generally disregarded. The Constitutions of the States are no more sacrosanct than are their statutes, and the enforcement of State constitutional provisions may be enjoined if they fail to measure up to Federal constitutional standards (*American Federation of Labor* v. *Watson*, 327 U.S. 582 (1946)).

The Court will not ordinarily act if there are two equally tenable interpretations of the provision under attack—one constitutional, the other not. The recognized principle is that the constitutional issue should not be considered before the State courts have definitively construed the provision (*Government and Civic Emp. Organizing Committee, CIO* v. *Windsor*, 353 U.S. 364 (1957)), and such construction is final and binding on the Court (*Watson* v. *Buck*, 313 U.S. 387 (1941)). But the Court does not lack jurisdiction or the power to issue an injunction merely because the State courts have not yet finally defined their terms (*Doud* v. *Hodge*, 350 U.S. 485 (1956)).

The jurisdiction of the Court may not be invoked if State officers are not necessary parties (*Wilentz* v. *Sovereign Camp, W.O.W.*, 306 U.S. 573 (1939)),[10] if the alleged unconstitutionality is not directly attributable to the State statute but merely goes to the results of official action taken pursuant to an erroneous construction of the statute (*Ex parte Bransford*, 310 U.S. 354 (1940)), or if the challenge is to a local ordinance or a statute having only local application (*Public National Bank of New York*, 278 U.S. 101 (1928)). The Court has power to hear suits to enjoin local officers from enforcing a State law which is applicable State-wide (*City of Cleveland* v. *United States*, 323 U.S. 329 (1945)), but has no power in the converse situation where a State official is enforcing a State statute not of State-wide concern (*Rorick* v. *Board of Commissioners of Everglades Drainage District*, 307 U.S. 208 (1939)). The formal identification and status of officials is not controlling.

Section 2281 requires that a suit to restrain the enforcement of "an order made by an administrative board or commission acting under State statutes" must be heard by the Court. It is sufficient that the constitutionality of the order itself be attacked; the complainant need not assert that the statute under which the commission or board acted is unconstitutional (*Oklahoma Natural Gas Co.* v. *Russell*, 261 U.S. 290 (1923)). Also, it is interesting to note that here we find a faint analogy to the rule that the Court should not act until an authoritative construction of the embattled provision be rendered. An order by a State board or commission which is subject to examination and validation by the Interstate Commerce Commission may not be denied enforcement pending that examination (*Board of Railroad Commissioners of North Dakota* v. *Great Northern Railway Co.*, 281 U.S. 412 (1930)).[11]

Substantially all State administrative orders are cognizable by the Court, but not under all circumstances. Power

to examine the constitutionality of the assessment, levy or collection of a State tax exists only when no effective remedy may be had in a State court (28 U.S.C.A. §1341).[12] District courts have no power to examine the rate order of a State agency if jurisdiction is based solely on diversity of citizenship[13] or repugnance of the order to the Constitution,[14] if the order does not interfere with interstate commerce, if it was made after notice and hearing, *and* if a plain, speedy and efficient remedy may be had in a State court (2 U.S.C.A. §1342).[15] Although these limitations restrict the examination of tax and rate orders *per se*, they do not operate to deny recourse to the Court when the statutes authorizing such orders are assailed as unconstitutional (*Public Utilities Commission of California* v. *United States*, 355 U.S. 534 (1958)).

II

Federal Statutes and Orders

Separate and distinct from the requirement that the Court hear applications to enjoin enforcement of State statutes and orders is a similar requirement concerning Federal statutes. The two are different in many respects, however, both in terms and interpretation:

> An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. [28 U.S.C.A. §2282]

As in cases concerning State law, the Court will consider an assault on Federal statute enforcement only when the question of constitutionality is substantial (*William Jameson & Co.* v. *Morgenthau*, 307 U.S. 171 (1939)).[16] Similarly, issues of local law may be passed on where the substantial Federal question exists (*California Water Service Co.* v. *City of Redding*, 304 U.S. 252 (1938)).

The suit must present a justiciable case or controversy (see U.S. Constitution, Article III, Section 2). The mere desire by a petitioner to engage in acts prohibited by the statute he assails is insufficient without a showing that he is prevented from so acting by at least the imminent threat of imposition of statutory penalties (*United Public Workers of America (C.I.O.)* v. *Mitchell*, 330 U.S. 75 (1947).

Section 2282 does not require that the defendant before the Court be a Federal officer. It is only in an exceptional situation, however, that an action to restrain the enforcement of a Federal statute can be maintained against a private party (see *Coffman* v. *Breeze Corporations*, 323 U.S. 316 (1944)).

Certain anti-trust cases are heard by the Court. By express provision, the Court must convene to decide an action instituted by the United States under the anti-trust laws if the Attorney General certifies to its general public importance (49 U.S.C.A. §43). No issue of constitutionality need be presented.

Mere comparison of section 2281 with section 2282 demonstrates that the latter, unlike the former, is not applicable to attacks on administrative regulations or orders. Without special statutory authorization or rule, the Court may not be convened to hear actions to suspend the enforcement of Federal administrative decrees (*William Jameson & Co.* v. *Morgenthau*, 307 U.S. 171 (1939)).[17] Such special statutes do exist. Only a Three-Judge Court can enjoin the operation of orders issued by the Interstate Commerce Commission (28 U.S.C.A. §2325) or by other agencies to which the jurisdictional requirement concerning I.C.C. orders is expressly made applicable.[18] And these cases, too, are properly before the Court even though they involve no constitutional considerations.

The Congress was extraordinarily careful to preserve Federal funds collectible under the Agricultural Adjustment Act (7 U.S.C.A., chapter 26) and the Internal Revenue Codes. No injunction may issue from any court which would have the effect of preventing the assessment or collection of the tax imposed by the former (7 U.S.C.A. §623(a)). The integrity of the revenue reaped under its provisions is absolutely immune from judicial interference by way of injunction. Generally, the same is true as to the revenue amassed under the terms of the latter (I.R.C. of 1954, 26 U.S.C.A. §7421). But even in the exceptional situations where the Internal Revenue Code permits recourse to equity (see 26 U.S.C.A. §6213(a)), the Three-Judge Court will not sit.

* * * *

FOOTNOTES

[1] Mr. Olney assumed the duties of Director on January 7, 1958. By 28 U.S.C.A. §604(a)(3), these duties require an annual report of the activities of the Administrative Office and the state of the business of the U.S. courts, together with statistical data and the Director's recommendations. The report, data and recommendations are public documents.

[2] The Judicial Conference of the United States is an annual meeting attended by the Chief Justice, the chief judge of each judicial circuit, the chief judge of the Court of Claims, and a district judge from each judicial circuit. 28 U.S.C.A. §331.

[3] Page II-24 of the Report, as follows:

Total 47

First Circuit:
Massachusetts 2
Rhode Island 1

Second Circuit:
New York, Southern 1

Third Circuit:
New Jersey 3
Pennsylvania, Western.. 2

Fourth Circuit:
Virginia, Eastern 2
Virginia, Western 1

Fifth Circuit:
Alabama, Northern 3
Georgia, Northern 1
Georgia, Middle 1
Louisiana, Eastern 2
Texas, Southern 1

Sixth Circuit:
Michigan, Eastern 2
Michigan, Western 1
Tennessee, Western 4

Seventh Circuit:
Illinois, Northern 2
Illinois, Southern 1
Indiana, Northern 2
Indiana, Southern 3

Eighth Circuit:
Arkansas, Eastern 2
Minnesota 3

Ninth Circuit:
Oregon 1
Virginia, Western 1

Tenth Circuit:
Colorado 1
Kansas 2
New Mexico 1
Oklahoma, Northern 1

[4] Page II-6 of the Report.

[5] Statistically, too, cases requiring consideration by the Court are on the increase. In the first month of the fiscal 1959 term of court, two Courts were convened in the Northern District, Eastern Division, of Illinois. [The Three-Judge District Court will be referred to in this article as the "Court."]

[6] 1 Barron and Holtzoff, *Federal Practice and Procedure* (1950 ed.) chapter 2, §52.

[7] But the Supreme Court will ordinarily refer applications for injunctions pending appeal back to the Three-Judge Court which heard the case: *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission*, 260 U.S. 212 (1922).

[8] Insubstantiality of a Federal question may appear either because it obviously lacks merit or because previous decisions of the Supreme Court clearly foreclose the subject:

California Water Service Co. v. *City of Redding*, 304 U.S. 252 (1938).

[9] Cf. *Case* v. *Bowles*, 327 U.S. 92 (1946), where the attack was made, not on a State statute, but on an action by the State land commissioner, the enforcement of which, it was alleged, would be violative of the Federal price control law.

[10] Even were State judicial personnel to be considered officers of the State for purposes of 28 U.S.C.A. §2281, the Federal courts could enjoin their actions only in accordance with 28 U.S.C.A. §2283, which reads:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

[11] See 28 U.S.C.A. §2325, which requires hearing by the Court of suits to restrain the enforcement of orders of the I.C.C.

[12] But see *Ex parte Williams*, 277 U.S. 267 (1928), holding that the mere assessment of a tax is not an "order" within the meaning of the predecessor section of 28 U.S.C.A. §2281.

[13] See 28 U.S.C.A. §1332.

[14] See 28 U.S.C.A. §1331.

[15] If jurisdiction is assertable due to failure of any of the limiting tests, the plaintiff need not apply to the rate-fixing agency for a rehearing before bringing his action before the Court: *Banton* v. *Belt Line Railway Corp.*, 268 U.S. 413 (1923). Nor need he wait if his appeal to the State supreme court is pending without supersedeas: *Oklahoma Natural Gas Co.* v. *Russell*, 261 U.S. 290 (1923). The Court will not exercise its jurisdiction where plaintiff has not invoked State statutory provisions authorizing appeal within the State system with a stay or supersedeas of the order: *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U.S. 341 (1951). But the Court may issue its interlocutory injunction if there is substantial uncertainty as to the existence of a judicial remedy in the State courts: *Corporation Commission of Oklahoma* v. *Cary*, 296 U.S. 452 (1935).

[16] See also *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, 304 U.S. 243 (1938), where it was said that the Three-Judge Court hears a case which prays for restraint against enforcement of an Act of Congress, not one which merely draws that Act in question.

[17] Under 5 U.S.C.A. §1032, the U.S. Courts of Appeals have exclusive jurisdiction to enjoin the enforcement of final orders of: (a) the Federal Communications Commission made reviewable by 47 U.S.C.A. §402(a); (b) with certain exceptions, the Secretary of Agriculture under the Packers & Stockyards Act of 1921, as amended, and under the Perishable Agricultural Commodities Act of 1930, as amended; (c) the Federal Maritime Board or the Maritime Administration entered under authority of the Shipping Act of 1916, as amended, and the Intercoastal Shipping Act of 1933, as amended, as are made reviewable by 46 U.S.C.A. §830; and (d) the Atomic Energy Commission as are made reviewable by 42 U.S.C.A. §2239.

[18] E.g., certain orders of the Secretary of Agriculture, 7 U.S.C.A. §217.

JOSEPH R. FRIEDMAN

Member Joseph R. Friedman was re-elected for a sixth consecutive term as president of Congregation Agudath Achim of South Shore.

BOUQUETS FOR ANDALMAN AND LEON

The editor is pleased to acknowledge receipt of the following letters from Judge Ulysses S. Schwartz of the Illinois Appellate Court and Judge Joseph Sam Perry of the United States District Court:

Dear Ben:

Maxwell Andalman's article in the Decalogue Journal on practice in the Appellate Court with respect to interlocutory decrees is a very timely one.

We have had a number of cases recently in which appeals have been taken from orders which are final as to one or more, but fewer than all the parties or claims, and in which appellants have failed to include the statutory provision that "there is no just reason" for delaying enforcement or appeal. They have given us a great deal of concern.

The statute is new and it takes time before it permeates the entire bar. Hence, such articles as Mr. Andalman's should receive close attention.

Very truly yours,
(Signed) U. S. Schwartz

Dear Mr. Weintroub:

After my talk with you last spring, I intended to write a letter to Attorney Leonard L. Leon regarding his article in The Decalogue Journal. The pressure of business and just plain neglect perhaps explain why I have not written until now.

I have retained the copy of The Journal, which you so graciously gave me, and have referred to it several times. The young fellow who wrote "The Warren Court—Return to the Constitution" in the January-February, 1958 issue certainly has a brilliant analytical mind.

Yours very truly,
(Signed) Joseph Sam Perry

THEY SPOKE . . .

On September 12th Harry G. Fins, member of our Board of Managers, at a meeting in the Covenant Club related his impressions of his recent trip to Europe and Israel.

On September 26th, Professor A. V. Levontin, Dean of Law Faculty of the Hebrew University, was the guest speaker at our regular luncheon. His subject was "The needs of the Law School, Hebrew University."

On October 3rd at a luncheon in the Covenant Club our Society held a symposium on the Judicial Article. The speakers were Harry G. Fins and Barnabas Sears.

On October 17th, same premises, member Hon. Sydney R. Yates, Congressman 9th District, Illinois, addressed us on "The 85th Congress—and the 86th."

DECALOGUE ESSAY CONTEST IS ON

ONE THOUSAND FOUR HUNDRED FIFTY DOLLARS FOR WINNING ESSAYS

"The Constitution and Religion in the Public Schools" — should religion be taught in public schools? is the subject of an essay contest presently sponsored by our Society for law students and lawyers. Rules governing the contest have already been mailed to deans of law schools. The legal profession has been familiarized with the project through contact with bar associations and newspaper publicity. As indicated below the best manuscript contributions will be determined by two panels of judges and awards totalling fourteen hundred fifty dollars will be distributed for first, second, and third winning essays. The popularity of this subject among both law students and lawyers is already attested by a great number of inquiries addressed to our administrative offices by many prospective participants seeking additional information on the contest.

"The American people seem to be divided on this question—should religion be taught in public schools," said Alec E. Weinrob, president. "TODAY Constitutional concepts of all kinds and the courts themselves are on trial. The question of religion in the public schools is again of prime importance. Various groups are advocating the introduction of religion in the public schools in one form or another; on religious holidays religious displays are being set up. Other groups are objecting to this teaching and these displays. Some litigation has taken place on the subject in various parts of the country, notably in New York. For these reasons The Decalogue Society contests should appeal to lawyers and law students who are trained to equate their knowledge of the law with their interest in public affairs."

Past president SOLOMON JESMER, during whose administration the contests were conceived, felt that The Decalogue Society would make a contribution in the public interest by sponsoring these contests among lawyers and law students. He said, "Perhaps the answers to questions that have troubled people of good faith everywhere will be found in some of the essays submitted in these important contests."

Joseph S. Grant is chairman of the essay contest committee. Past president Elmer Gertz is president of The Decalogue Foundation, Inc. Solomon Jesmer, Elmer Gertz and David F. Silverzweig constitute the administrative committee in charge of the contests. Member Marshall Patner is administrative director.

PRIZES FOR LAW STUDENTS

FIRST PRIZE	SECOND PRIZE	THIRD PRIZE
$300.00	$200.00	$100.00

The contest is open to Law Students of the Junior and Senior years of all Law Schools of the United States.
Manuscripts should be from 1500 to 3500 words.

JUDGES OF THE CONTEST:

JUDGE JULIUS J. HOFFMAN
Judge of the United States District Court, Northern District of Illinois.

JUDGE ABRAHAM L. MAROVITZ
Chief Justice, Criminal Court of Cook County, Illinois.

JUDGE JOHN V. McCORMICK
Justice of Appellate Court of Illinois, Second Division.

Rules of the
ESSAY CONTEST
for Law Students

1. All Manuscripts must be mailed and postmarked not later than July 1, 1959.
2. All Manuscripts are submitted at the risk of the contestant.
3. While the subject has primarily a constitutional basis and the contestant's thesis should be supported by legal arguments, the social aspects should not be overlooked.
4. All Manuscripts, whether award winners or otherwise, shall become the property of The Decalogue Society of Lawyers, and the Society shall have the right to publish all manuscripts in whole or in part without compensation other than the prizes of the Contest.
5. The decision of the Judges shall be final.
6. Contestants must have completed at least two years of study at law school by July 1, 1959.
7. On a separate sheet attached to the manuscript each contestant should give the following information: Name, Year at Law School, Name of Law School, Home Address, Law School Address.
8. All manuscripts should be mailed to Essay Contest Committee, The Decalogue Society of Lawyers, 180 West Washington Street, Chicago 2, Illinois.

Rules of the
ESSAY CONTEST
for Lawyers

1. All Manuscripts must be mailed and postmarked not later than July 1, 1959.
2. All Manuscripts are submitted at the risk of the contestant.
3. While the subject has primarily a constitutional basis and the contestant's thesis should be supported by legal arguments, the social aspects should not be overlooked.
4. All Manuscripts, whether award winners or otherwise, shall become the property of The Decalogue Society of Lawyers, and the Society shall have the right to publish all manuscripts in whole or in part without compensation other than the prizes of the Contest.
5. The decision of the Judges shall be final.
6. Contestants must be lawyers admitted to the Bar of the State of Illinois or members in good standing of The Decalogue Society of Lawyers. Officers and Members of the Board of Managers of The Decalogue Society of Lawyers, Members of the Essay Contest Committee and members of the families of said groups are not eligible to take part in the Contest.
7. On a separate sheet attached to the manuscript each contestant should give the following information: Name, date admitted to the Bar and in what state, home address, office address, name of firm. If a member of The Decalogue Society of Lawyers, so indicate.
8. All manuscripts should be mailed to Essay Contest Committee, The Decalogue Society of Lawyers, 180 West Washington Street, Chicago 2, Illinois.

PRIZES FOR LAWYERS

FIRST PRIZE	SECOND PRIZE	THIRD PRIZE
$500.00	$250.00	$100.00

The contest is open to all lawyers of the State of Illinois and to members of The Decalogue Society of Lawyers everywhere.

Manuscripts should be from 2000 to 4000 words.

JUDGES OF THE CONTEST:

JUDGE JULIUS H. MINER
Judge of the United States District Court, Northern District of Illinois.

JUDGE WALTER V. SCHAEFER
Justice, Supreme Court of Illinois.

JUDGE ULYSSES S. SCHWARTZ
Presiding Justice, Appellate Court of Illinois, First Division.

ANALYSIS OF SUPREME COURT RULE 24-1 AS APPLIED TO CRIMINAL CASES

By HARRY J. BUSCH

Member Harry J. Busch has lectured at the University of Illinois. He has contributed to the TRIAL LAWYERS GUIDE written by Irving Goldstein, at whose Post-Graduate Course for Lawyers he is a lecturer on criminal law.

On September 17, 1958, Rule 24-1 of the Supreme Court of Illinois became effective. It is as follows:

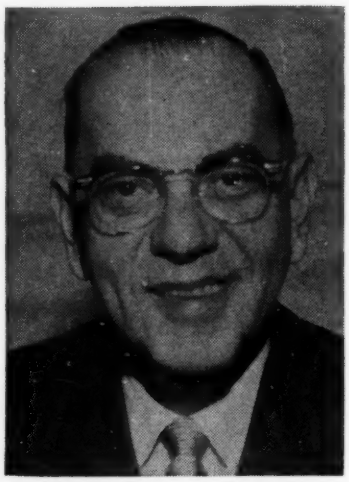
> The Judge shall initiate the voir dire examination of jurors in civil and criminal cases by identifying the parties and their respective counsel and he shall briefly outline the nature of the case. The Judge shall then put to the jurors any questions which he thinks necessary, touching upon their qualifications to serve as jurors in the case on trial. The parties or their attorneys shall be allowed a reasonable opportunity to supplement such examination, but shall not directly or indirectly examine jurors concerning matters of law or instructions.

Prior to the enactment of this Rule, I am informed that at the Judges Conference in Chicago, during December, 1957, the following question was propounded:

> How far should attorneys be allowed to go in the selection of a jury regarding the asking of questions that pertain to questions of law in the case and what are going to be the instructions of the court?

An eminent jurist from Cook County advanced the opinion that it was improper, upon the *voir dire* in both criminal and civil cases, to allow attorneys to examine jurors concerning questions of law supposed to be in the case. He further stated that it was improper to inquire as to whether the jurors would follow certain instructions, if given, claiming that such questions were of no aid to the attorney in arriving at an intelligent exercise of the right of challenge, but were indulged in, usually at length, for the sole purpose of indoctrinating the jury, in advance, in favor of the interrogator's theory. As applied to criminal cases, he based his contention on the decision in *People* v. *Bruner*, 343 Ill. 146, which held that the jury were the judges of facts and no longer judges of the law; and, therefore, there seemed to be no reason why jurors on *voir dire* examination should be told anything about the law, since they were no longer the judges of the law. The *Bruner case* is, in my opinion, a masterpiece of legal dissertation, both in its majority holding and the dissenting opinion written by Mr. Justice Duncan.

Prior to the *Bruner case*, when the jury were both the judges of the law and the facts, in *People* v. *Donovan*, 139 Ill. 412, extensive reference was made to the question of *voir dire* examination. There the Court examined four of the prospective jurors regarding their statutory qualifications and also inquired whether they had heard of or read the facts of the case, knew the defendant or her attorney, had formed or expressed any opinion as to her guilt or innocence, entertained any prejudice, or knew of any reason why they could not give the defendant a fair and impartial trial and render a verdict according to the law and the evidence. Counsel were then asked if they desired the court to further examine the jurors or to have further questions put to them by the court. Both replied in the negative, but the defendant's counsel claimed the right to examine the jurors for cause and to put questions to them to determine whether he would interpose peremptory challenges. This the court denied and ruled that "except you



HARRY J. BUSCH

examine the jurors for cause through the mouth of the court, you can not examine them at all," and declined to permit the defendant's counsel to examine the jury. In the *Donovan case*, our Supreme Court went to great length in its explanation of the right of the *voir dire* examination.

In *Stevens* v. *The People*, 38 Mich. 739, in Thompson on Trials, page 99, 4, Blackstone's Commentaries, page 353, and 1 Ch. Criminal Law 534, additional expressions will be found on this subject, all uniformly holding that it is vital and necessary that counsel be permitted reasonable latitude in the *voir dire* examination of prospective jurors.

In *People* v. *Kestian*, 335 Ill. 596, at 601, the late Judge Rush, on trial below, had interrupted *voir dire* and read to the entire jury a general instruction as to the law in criminal cases. It was not contended that the instruction was erroneous, but it was said that by this procedure counsel was hindered and embarrassed in his examination of the jurors individually. The record did not, however, so indicate. On the contrary, it showed that counsel was permitted to fully interrogate the jurors separately after the instruction had been given and that he adopted the instruction as the basis for his further interrogatories. In view of that state of the record, the contention was without merit.

I recognize that these cases were decided prior to the *Bruner* decision. However, subsequently, in the case of *People* v. *DeLordo*, 350 Ill. 148, decided in October of 1932 and appearing on pages 153, 154 and 155, counsel for the defendant, in questioning the prospective juror on *voir dire*, said:

> The Court will undoubtedly instruct you that before you can find the defendants guilty, the State must prove its case beyond a reasonable doubt and to a moral certainty that they are guilty as charged, etc.

Counsel for the defendant also told the Court that he wanted to tell the jury what the law of the case on trial was. The court refused outright to let counsel explain to the jury the law by which they should be guided in rendering their verdict. The Supreme Court reversed and remanded for the error committed and cited with approval *Donovan* v. *The People, supra,* and *People* v. *Redola,* 300 Ill. 392. Subsequently, *People* v. *Cravens,* 375 Ill. 495, was another instance in which the Supreme Court passed upon the *constitutional right* to a speedy trial by an *impartial* jury.

As recently as January, 1954, the Supreme Court in the case of *People* v. *Murawski,* which appears in 2 Ill. (2d) 143, at 147, mentioned the following situation:

> It is strongly urged by counsel for defendant that the trial court grievously erred in unduly restricting his examination of the jury on their voir dire. This question was propounded to one of the jurors, "Are you of the opinion that an abortion should never be performed?" The trial court should have permitted this inquiry. It is within the province of a trial attorney to make any reasonable and pertinent search to ascertain whether the minds of prospective jurors are free from bias and prejudice, so that he may more wisely exercise the right of peremptory challenge. Abortion with all its involvements is a particularly fertile field for preconceived notions and prejudices.

Section 5 of Article II of the Constitution of Illinois 1870, which is the Bill of Rights, declares:

> The right of trial by jury, as heretofore enjoyed, shall remain inviolate, etc.

Our Declaration of Independence provides, among other things, the following:

> Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes.

Prudence, indeed, would here dictate that long established rules of procedure affecting human lives and human liberties should not be changed for light and transient causes.

So cognizant of human lives and liberties were the framers of our Constitution that they also tried in every way possible to protect the right of trial by jury as theretofore enjoyed. It can readily be seen that over a period of many years, both before and after the *Bruner* decision, whenever the issue came directly to the attention of the Supreme Court of our State, they held that it would be impossible to exercise the right of challenge intelligently unless reasonable inquiry was allowed trial counsel.

There can be no doubt that every man is entitled to be represented by counsel of his choice, and I contend that such representation justly commences with the selection of a jury to try the issues. Our United States Supreme Court, in *Powell* v. *Alabama,* 287 U.S. 45 and in *Chandler* v. *Fretag.* 348 U.S. 3, has held that an accused in a *State* criminal prosecution has an *unqualified right* to make use of counsel at every stage of the proceedings against him. I interpret this to mean that he has an unqualified right to speak through the lips of his counsel rather than through the mouth of the court within reasonable limitations on *voir dire* examinations.

For our eminent jurists to claim that questioning prospective jurors on *voir dire* and usually at length was for the sole purpose of indoctrinating the jury in advance in favor of the interrogator's theory finds no substance either in law or in fact. Every experienced trial lawyer tries to avoid repetition for obvious reasons. How can a jury be indoctrinated in advance in favor of the interrogator's theory when both sides comment upon the law as it actually exists? Surely if a fair and impartial jury is to be selected, the combined efforts of counsel for each side, as well as the instructions of the court, are much more apt to produce a fair and impartial trial than would be the case under the present rule.

The only reasons advanced by some of the members of the judiciary for being in favor of Rule 24-1 appear to be somewhat as follows: "Well, you fellows take too much time in the selection of a jury. We need to speed up our calendars." I again point out that under all of the decisions, Rule 24-1 was totally unnecessary even as a time-saving device, because reasonableness of inquiry has always been within the control of the court. If the new rule is permitted to remain in force and the attorney must speak through the lips of the judge, why should there not be a proceeding where the court will conduct all of the direct and cross examination as well as the summation for each side?

It is a well known fact that the civil calendars are congested and that it takes approximately four to five years for a personal injury case to reach the stage of trial; but such is not the condition in the Criminal Court. There, trials have been held within a period of from one month to three months following indictment. A case which is one year old is termed "an old case" and the State's Attorney has very little difficulty in bringing such case to trial. Where a life or liberty is involved, do we, as a liberty-loving nation, hold life or liberty so cheaply that we can afford to deprive a defendant, who is presumed innocent under the law, of his rights to inquire of prospective jurors with reference to bias or prejudice? How is bias or prejudice to be determined? The mere question to a juror is an affront. It can only be determined by counsel making sure that the juror has no misgivings as to the meaning of an indictment; that he understands where the burden of proof lies; and that he be told on *voir dire* examination briefly how he must judge the credibility of a witness, for he is judging the credibility of such witness as the witness testifies. The instruction of the court later is but a re-affirmation of the rule as announced on *voir dire.*

My experience in selecting juries, both as a prosecutor and as a defense lawyer for over thirty years, leads me reluctantly to the belief that in attempting to cure a so-called evil—namely, the time element in selecting a juror—the door has been opened wide to the far greater evil of making a trial a mockery.

During the month of February, 1958, at the request of Charles Bowman, professor of Law at the University of Illinois, I appeared as a lecturer at the University of Illinois, in connection with a practice course for lawyers, and commented upon the method of selecting a jury in the Criminal Court of Cook County, Illinois. The *Illinois Bar Journal,* of October, 1958, contains a brief summary of the remarks I made at this meeting. I again re-iterate that it is practically impossible to outline even a suggested type of the *voir dire* examination which would be applicable to every criminal case, but that it is the duty of counsel for the accused, as well as the duty of the State's Attorney, to obtain through every legal avenue a fair and impartial trial.

Jurors coming into the box are, as a general rule, bewildered individuals; they are conscious of their great civic responsibility, but do not have the remotest idea of how a trial is conducted, nor what fundamental principles of law are applicable to the trial. It takes more than a judge alone to properly instruct a jury in a criminal case. It is the combined obligation of counsel for the State, the defense, and the court to explain to prospective jurors not only their duties but their obligations during the *voir dire* examination and through instruction as well, in order to adequately preserve the right of fair and impartial trial.

The United States is a great nation with unlimited opportunity for all. We have built and are building more and more super-highways; we have reached the stage where the family without at least one car is the exception; our offices and homes are modern and air-conditioned; our population has increased; our urban area has spread; our industrial plants have expanded; but our court facilities remain woefully behind.

Our judiciary is over-worked, underpaid, and understaffed. Many judges do not have the semblance of a working library, although matters involving vast amounts of money and extensive property rights are litigated before them daily. Most of our judges find themselves working far into the night and from their meager salaries not only pay their taxes, support their families, and pay their assessments, but have also attempted to supply, from their private funds, the semblance of a working library which they are called upon to use after court hours so that they may be able to decide promptly the many complex questions of law which constantly arise.

If we, as private practitioners, found that our work had increased over a period of a quarter of a century, we would not for a moment attempt to carry on our respective practices in congested quarters without adequate library facilities and competent secretarial help, especially in a hot, stifling atmosphere such as obtains during the late spring, summer, and early fall in this area. We would seek larger space, additional help, and more comfortable quarters.

There are solutions for the crowded and congested civil-trial calendar. One of them which I strongly urge is that we cease being niggardly with our purse-strings, particularly as regards a modern courthouse or court center and the judiciary. There is an immediate and urgent need for at least one new courthouse with the required court facilities —and by that I mean a modern structure with equally modern equipment centrally located and at least a minimum of fifty additional judges.

Consideration must be given to the human equation. Judges are people; their health is a matter of concern to them and their families just as our health is to our families and ourselves. It is only fair that allowances be made for vacation and sick leave for the judiciary; we take a little vacation now and then to get away from the pressure of the courtroom and office work. The judges must also be relieved from pressure occasionally.

My proposal for fifty additional judges and adequate quarters will not seem revolutionary when consideration is given to all of the attendant circumstances—namely, that there is a backlog of cases so vast in number that the ten judges at present assigned to hear common-law matters can not possibly perform such a task. It will take at least the additional number I have mentioned and probably more to reach a point where justice is meted out to all people within a reasonable time.

Some may say that this will not solve the problem. If it does not help, then this must become the subject-matter of legislation similar in intent to the Four-Term Act of the Criminal Code, with provision that trial must be held within a definite and reasonable period of time, to be fixed by statute, or, in the alternative, default judgment be entered by failure of either party to pursue his day in court.

I strongly urge therefore, that the Supreme Court of Illinois re-consider Rule 24-1 or that, in the alternative, legislative action be taken with respect to this subject-matter.

ANNES ON THE ORIENT

Past president Paul G. Annes addressed the City Club recently on "An American in the Orient"—his impressions of his recent trip to Hong Kong, Siam and Pakistan.

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FAVIL DAVID BERNS, *co-chairman*

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Marshall Patner	Solomon Jesmer
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Leonard M. Ring	Meyer Weinberg
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	Benjamin Weintroub
Gerald M. Rubin	Favil D. Berns
Terrell C. Schwarz	Favil D. Berns
	Meyer Weinberg
Albert Siegel	Herbert A. Glieberman
	Meyer Weinberg
Wallace Taine	Louis J. Nurenberg
	Benjamin Weintroub
Byron G. Toben	Favil D. Berns
	Meyer Weinberg
Nathan Wolfberg	Meyer Weinberg
	Jack Dwork

SOCIETY HONORS HOFFMAN AND MINER

Judges Julius J. Hoffman and Julius H. Miner of the United States District Court were feted by our Society on October 14th, at a luncheon in the Covenant Club, on the occasion of their ascendancy to their high judicial posts and our Society's pride in that fact. Both judges, stalwart and active members of our organization, have always taken a keen interest in its progress.

More than three hundred members and guests attended this function. Members of the Federal Judiciary, Circuit, Superior, and Municipal Court judges as well as State and County officials were enthusiastic participants in this event. President Alec E. Weinrob presided. Each of the speakers lauded the untiring efforts of past president Jack E. Dwork in arranging this festive occasion. Judge Harry G. Hershenson of the Superior Court presented each of our guests of honor, in behalf of our Society, with four volume sets of the encyclopedic *Jewish Past and Present*.

Presentation:

—JUDGE HARRY G. HERSHENSON

. . . Occasions such as these serve above all else to emphasize the usefulness of this organization as an important and vital Bar association. This Society is alert, not only to the advancement of the highest principles and ideals of the legal profession; it is not irresponsive also to the exacting calls and appeals, whether coming from its own community or from its less fortunate brethren abroad. It is ever ready and eager to join with other legal bodies in projects that have to do with the improvement of the practice of the law.

It is my welcome assignment to present my fellow members of The Decalogue Society of Lawyers, Judge Julius J. Hoffman and Judge Julius H. Miner, whose friendship I treasure, with tokens of appreciation of our Society's pride in their holding of great judicial posts. In arranging this affair, it is the Society's firm conviction that both of these judges by their conduct, integrity, and learning have cast luster upon the Bench and Bar. We are proud of their achievements, of the records they have made as lawyers, as judges, and as devoted workers for the good of the community . . . of their appointment to the Federal Bench . . . and delighted with the fact that they are members of our Society.

Rather than present them with a plaque, for already they have many of them, the committee that has arranged this luncheon looked about for something which they could use to good advantage. The final choice was a four volume encyclopedic set entitled: *JEWISH PEOPLE: PAST AND PRESENT*. It is a comprehensive, scholarly guide to Jewish religion, social and political movements, education, literature, art, music and cultural lore in all of its ramifications, from biblical times to the present day. It is a source book of a rich, spiritual and cultural significance, the reading of which will prove inspirational and instructive to our esteemed and distinguished guests of honor.

JUDGE JULIUS J. HOFFMAN

—Response

. . . As a judge who is also a Jew I always feel an extracurricular but abiding responsibility. The Jewish heritage of learning, wisdom, and honor is something which each of us must preserve and, as far as we are able, enlarge. This heritage is not a thing which we received by accident or can retain without effort. If the son of a rich man is born with a silver spoon in his mouth, the son of a Jew as we all know, is born with a book in his hand. For centuries the Jew's tradition of scholarship has been stronger than the social pressures which would have kept him in ignorance and bondage. In combination, the two forces, oppression and love of knowledge, have continually stimulated his will to learn and compelled him to learn more than the average man in order to gain even average recognition. To non-Jews it often seems that our people succeed in spite of being Jews. We find it natural that they succeed *because* they are Jews. If every road is steeper for them that means only that they must develop better wind and harder muscles in order to make the grade. You and I know that wherever he goes the Jew is a symbol of his people. When he does wrong society tends to condemn all Jews. But, to a certain extent, the converse also is true. The Jewish biologist who discovers a vaccine not only helps to wipe out a disease but may at the same time alleviate a few cases of anti-Semitism. The physician, educator, artist, lawyer, judge, the Jew of every sort, is, ex officio, engaged in public relations.

In my own work I am acutely aware of the obligations which this duality imposes. My decisions are based on the truth and the law. They are not related to the fact I am a Jew; that fact, nevertheless, often influences people's reactions to my decisions. If I am a good judge, I am being a good Jew, and if I am a good Jew, I am doing a service to my co-religionists. I know when I am on the bench that Jews are on trial. In order to do my best I need no motivation other than the determination to serve ably in the cause of equal justice, but if I succeed I take pleasure, additionally, in knowing that I am contributing to the good name of my people.

That, of course, is one of the things which the Decalogue Society is constantly doing. The third largest bar association in Illinois, whose membership includes some of the most distinguished lawyers in Chicago, it is a credit to Jews everywhere and an example of Jewish intelligence and integrity. I am happy to be associated with the Decalogue Society and very proud to be recognized by it. I thank you very much indeed. I shall never forget this day, but in accepting your award I am remembering the words of Edwin Arlington Robinson who said that there are:

> Two kinds of gratitude: the sudden kind
> We feel for what we take, the larger kind
> We feel for what we give.

Now I am very conscious of that sudden kind, the gratitude for what I am accepting. I will not lose it, I assure you, but day after day on the bench I will be filled with the larger kind, gratitude for the opportunity to give, to be of service, and to live up to the opinion of me which you have expressed here today. . . .

JUDGE JULIUS H. MINER —Response

. . . The Decalogue Society has been a constructive, progressive and cooperative association throughout the years. It has actively and effectively participated in many civic, professional and philanthropic endeavors and no group has accomplished so much in such a brief time. It enjoys the high esteem and confidence of the Bench and Bar.

Canons of Judicial ethics caution a judge never to forget that he is not a Depository of Arbitrary Power, but a judge under the sanction of the law. Upon the adherence to the highest judicial canons of conduct the vitality of our cherished liberty depends, for otherwise right to trial by jury, freedom of speech, religion—all that we cherish—becomes as sounding brass or a tinkling cymbal.

A judge who does not exhibit social-mindedness in interpreting and applying the law in a case clearly shows that he does not possess it. Idealism, social understanding and wisdom on the part of judges are the most essential needs, just as there is need for statesmanship in the two other branches of government.

A judge must possess a genuine and abiding faith in and love for his fellow men. He must have a sense of justice coupled with a sense of humor. He must have an enlightened intellectual and philosophical integrity. He must take pride in his profession and must never cease to give his best. He should be courteous to and patient with all lawyers, particularly with the younger.

To me the quest for justice is a dynamic and exciting adventure. It implies a receptiveness toward change. Our administration of justice is neither perfect nor inflexible and we must continue to search for improvement. Our laws have all the human frailties and are subject to perpetually changing interpretations, provided all changes retain the indestructible purpose of true justice.

The integrity and efficiency of judicial process is most vital in a democratic society. The confidence of the people in the administration of justice is the first essential for free government. You and I are entrusted with a sacred mission —you lawyers to represent litigants and we judges to dispense justice impartially and fairly. . . .

MEMORIAL SERVICES

Memorial services for member Judge Harry M. Fisher, sponsored by our Society, were held on January 8th at noon, in the courtroom of the late judge. Participating in the services were Rabbi Ira M. Eisenstein, Anshe Emeth Temple; Alec E. Weinrob, president; Augustine J. Bowe, past president Chicago Bar Association; David J. A. Hayes, first vice president Illinois State Bar Association; and Judge Thomas E. Kluczynski, chief justice of the Circuit Court Cook County.

Statements by the speakers on the character, life, and achievements of the late judge will appear in a near issue of The Decalogue Journal.

INTER-AMERICAN BAR CONFERENCE on April 10th - 19th

The eleventh annual conference of the Inter-American Bar Association will be held at Miami, Florida, from April 10th to 19th. An unusually interesting program involving discussions, conferences and meetings touching on phases on law pertaining to criminal law and procedure, civil law, social and economic law, national resources, international conflicts, and commercial law will be covered by outstanding authorities on these subjects. A lavish entertainment program for the delegates and guests has been arranged by the Inter-American Bar Association committee in charge of this conference.

Members of The Decalogue Society of Lawyers are invited to attend as delegates or visitors. Our Society is a member of the Inter-American Bar Association. For further details please address past president Harry D. Cohen, chairman, at 139 No. Clark Street, telephone FRanklin 2-4736.

WE TOAST THE BENCH

Attended by members of the Bench and Bar in larger numbers than ever before, The Decalogue Society of Lawyers annual "Toast to the Bench" event was held in the afternoon on December 18th, in the grand ballroom of the Covenant Club.

Oscar M. Nudelman was chairman and Carl B. Sussman co-chairman of The Decalogue Merit Award committee which selected Judge Simon Sobeloff the recipient of The Decalogue Annual Award for 1958.

THE DECALOGUE SOCIETY OF LAWYERS

Announces with deep regret the death of the following members:

Judge Harry M. Fisher
Mr. Mort D. Goldberg
Mr. Samuel Kart
Mr. Abraham Litow
Mr. Milton Manasse
Mr. Irwin B. Smith
Mr. Albert Victor

SAMUEL D. GOLDEN

Member Samuel D. Golden was appointed head of the legal department of the Argonne National Laboratory, located near Lemont, Illinois.

Prior to his elevation to the new post Golden served on the legal staff of the Laboratory for five years.

JUSTICE BRISTOW ADDRESSES SOCIETY

A capacity grand ballroom guest attendance marked The Decalogue Society's annual Israel Bond dinner at the Covenant Club on October 15th at which the Society honored Justice George W. Bristow of the Illinois Supreme Court. Governor of the State of Maryland, Theodore R. McKeldin, was the guest speaker at the affair. Judge Henry L. Burman, chairman, presided at the event. Judge Harry M. Fisher was co-chairman.

Judge Bristow spoke at length on the economic, political and social problems besetting the citizens of the young republic. He said in part:

> . . . As an American and as a Christian I have long suffered a sense of frustration from the degrading human behavior of which the Jewish people have been the chief victims. But when the United Nations adopted the resolution partitioning Palestine and set aside a part of it as a homeland for the Jewish people, I rejoiced. As a Judge, I interpreted that act as the first attempt by the civilized nations to right the centuries-old wrongs from which the Jews suffered. I was proud of my country's role in bringing this about. . . .

Below is the Justice's address dealing with problems affecting the Bar, Bench, and the welfare of American people.

History will report that in our time, in 1958, we were embroiled in a cold, and intermittently hot, war with the Communist nations. If we would have history report our survival, we must gird ourselves not only by repairing our weaknesses and stocking our arsenals, but by inventorying our strengths. In any such inventory we must include among our greatest strengths and assets, our concept of individual freedom under law. That is the great principle that distinguishes our form of government and our way of life from the Communist system.

However, our constitutional guarantees for individual freedom are not self-executing. As Justice Warren stated on Law Day, "Their vitality springs not only from the printed words, but from the hearts and minds and spirits of those who believe in them as living principles." It is the province—nay, the challenge—confronting the Judiciary today to preserve individual and minority rights, and to be the "watchmen at the towers."

That is not a "new found" thought for me; nor a legal philosophy reserved for banquets and testimonial dinners. On the contrary, the sanctity of individual and minority rights has guided my decisions on the Bench for the past 31 years while serving in the Circuit Court, in the Appellate Court, and in the Supreme Court. I am happy to report that most of my associates on the bench share this thinking.

On a higher plateau of the law, the United States Supreme Court, in meeting today's great legal challenge, has, in a series of highly controverted decisions, renewed its insistence on inviolable individual rights as an integral part of our free society. The court has reaffirmed its duty to hold-co-ordinate branches of government, as well as the States, within constitutional bounds when they attempt to invade such rights. In its recent determination that a State may not constitutionally avoid integration by evasive schemes, the Court, through Justice Frankfurter stated forthrightly:

> Deep emotions have, no doubt, been stirred. They will not be calmed by letting violence loose—violence and defiance employed and encouraged by those upon whom the duty of law observance should have the strongest claim—nor by submitting to it under whatever guise employed. Only the constructive use of time will achieve what an advanced civilization demands and the Constitution confirms.

These decisions in the de-segregation cases have had a far reaching impact upon society, and were bound to cause public agitation. That agitation has ranged from proposals in certain Southern states for revival of the Calhoun Doctrine of Nullification to the introduction of legislation which would deprive the Supreme Court of the jurisdiction to hear appeals in certain classes of cases.

The critics say—the polite ones, that is—that the court is deciding cases not on law, but on sociology. What they are concerned about, of course, is not that social values are being taken into account by a court, but that the Court has not accepted the critics own social values, and has refused to erect prejudices into legal principles, as Justices Brandeis and Holmes warned against doing.

But attacks on the Supreme Court are not a novel phenomena. Since the early days of Cohens v Virginia in 1827 the court has weathered such attacks. They have taken the form of urging impeachment of its judges, diluting its jurisdiction, increasing its members and changing the method of its selection. Such eruptions are, as Alexander Hamilton envisaged, no more than the price we pay for a representative form of government, and today's frothing anger will give way to tomorrow's sober thought. The legislative process itself will preclude hasty action, and the Court will eventually emerge unscathed from such denunciation.

In the meantime the Supreme Court will, as it has in the past, suffer the slings and arrows of outraged

(*Continued on Page* 22)

LAW SCHOOL OF THE HEBREW UNIVERSITY

By A. V. LEVONTIN

An address by Professor A. V. Levontin, Dean, The Law Faculty Hebrew University, Jerusalem, on September 26th at the Covenant Club before the Board of Managers of our Society. Professor Levontin is author of The Myth of International Security.

The Department of Law of the Hebrew University was established in 1949. Its founders had to bear in mind the twin considerations of the needs of a newly founded State, namely, organizing from scratch a modern judiciary and a civil service, and the adaption, if possible, of a complex—and in many cases antiquated and unsatisfactory—heritage from the former legal systems in conformation with 20th century patterns and experiences. The country had been under Turkish rule for some 400 years preceding the British occupation in 1918, and its laws contained elements of Mohammedan law, of the Turkish feudal social system, and, at a later stage, importations from French jurisprudence. It was therefore necessary to combine an appreciation of the requirements of a new State with a training that would acquaint students with the various earlier traditions prevalent before its emergence. In addition, since it was necessary to furnish students with the general cultural background essential to the understanding of law, there was incorporated in the curriculum a wide variety of non-legal studies during their first two academic years.

It would be appropriate, by way of factual background, to list some of the achievements of the law school. Since 1954, more than 500 men and women were graduated, and although, predominantly, they entered the profession, many became civil servants and legal advisors in positions of prominence; some have attained posts of responsibility and dignity in the Israel foreign service, one has been elevated to the Bench. A number of our young graduates occupy teaching positions on the faculty after having evoked high praise as research students in leading universities abroad, including those in the United States.

The law library has now reached a figure of some 25,000 volumes, maintains current subscriptions to more than 200 legal periodicals in many languages (predominantly English) and operates an exchange scheme with many leading libraries throughout the world. The Law School has published six volumes in Hebrew, under the title of "Legal Studies" on such subjects as family law and administrative law, and has brought out a volume, in English, of essays

A. V. LEVONTIN

on legal subjects by members of the faculty; and, in Hebrew, of a selection of Masters' dissertations by some of its better students. Practically all of its teachers contributed articles to leading law journals besides having separate books published.

Eminent guests from abroad paid periodic visits to the School and delivered public lectures under its auspices on a variety of topics. Among them and their subjects were Arthur Goodhart, Master of University College, Oxford, "The Spirit of the English Law;" Lord Evershed, Master of the Rolls, "Aspects of English Equity"; Sir David Hughes Perry, "The Changing Conception of Contracts in English Law"; The Rt. Hon. Lord Cohen of Walmer, "One Hundred Years of Limited Liability Companies in England." Professor Glanvil Williams, spoke on selected topics from the Criminal Law. These visits were made possible by the Lionel Cohen Lectures established by the generosity of our friends in Great Britain.

Although there have not been as many guests from the United States, the University has been greatly honored by lectures delivered on separate occasions by Professor Edmond Cahn of New York University, and Professor Harper of Yale to its great profit, and plans are now under active consideration for the establishment of an Institute of Criminology and of an Institute of Legislation and Comparative Law.

The physical difficulties faced during the first nine years of existence have been largely solved mainly because of the generosity of the Canadian Friends of the Hebrew University whose contribution made possible the erection of the new premises on the general University campus at Givat Ram, to the west of the city. However, the non-physical difficulties are by no means at an end.

Among our more pressing needs are the establishment of one or more endowed Chairs in Law; at the moment we do not have even one such Chair. The cost of the establishment of an endowed Chair is not much more than $100,000, which is approximately one-half of the capital required for a similar purpose in the United States. Any Chair may be named in accordance with the wishes of the donor.

We also have great need for Fellowships annually, of the value of about $2,000 each; and $12,000 annually is required to aid publications and research. We must have approximately $10,000 a year to augment the acquisitions of our library in order to guide its development as an adequate and effective arm of the Law School.

It is, regrettably, true that Jewish lawyers in America, as a group, have done for the Law Faculty much less than other professional organizations have accomplished for related departments in the University close to their hearts. The shining exception to this is The Decalogue Society of Lawyers in Chicago which has already shown its active interest in the work of the Law School through a grant, some three years ago, of $2,000 in aid of publication, through the fruitful efforts of its members in securing legacies, and, lastly, through its recent decision to set up a $50,000 Fellowship Fund.

When, on the 26th of September, I was privileged to lunch in Chicago with the officers of The Decalogue Society, I was profoundly encouraged to realize that the Society's material generosity was but an external manifestation of the warm-hearted, kind and intelligent interest which its members take in our University both as Jewish lawyers and as Americans conscious of necessity of spreading the basic proposition of the Rule of Law in this part of the world in general, and in the State of Israel in particular.

To The Decalogue Society, its officers and members, I wish to express my gratitude for their hospitality during my stay in Chicago. I wish them every happiness and success and I express an earnest hope that, at least for some of them, it will be possible to pay us a visit in Jerusalem.

BOOK REVIEWS

ONLY IN AMERICA, by Harry Golden. Foreword by Carl Sandburg. The World Publishing Company, 317 pp. $4.00.

Reviewed by ELMER GERTZ

Harry Golden is a rotund and bright little Jew from the lower East Side of New York, who prankishly moved to Charlotte fifteen years ago and edits *The Carolina Israelite*, which is read and treasured, from first word to last, typographical inelegance and all, by people of all races and creeds everywhere in America. (I first heard of his paper from a Kansan friend of mine of Welsh extraction.) He spent eight hours one day visiting with Carl Sandburg, the big Swede from the shores of Lake Michigan, who, seeking sunshine, had moved with his prize goats, his guitar and his Lincoln lore to North Carolina a couple of years after Golden prepared that uncertain old state for the new dispensation of love and *knishes*. The Jew and the Swede allowed each other equal conversational time; all was fair and square as they hummed and whispered and whistled about a wonderful land into which their fathers had not been born, but which now belongs to them and their American-born sons and daughters, in all of its immigrant-built munificence. When Golden left, Sandburg's daughter wished that there had been a tape-recording of the day's conversation, and Sandburg put his arms around Golden and kissed him on both cheeks.

There is a sort of Golden symbolism in this vignette of the Jew boy and the Swede. Golden's book is filled with equally telling stories, conversations, musings, tags of speech. It would bore only an ox; it will charm others. Golden is specific—everything has definite dimensions and lineaments — there is no vagueness in him, even when he is at his philosophical best and giving utterance to thoughts that in others sometimes lie too deep for words (his causerie on death, for example). Like all good essayists, he is almost completely autobiographical, self-centered. Everything that he sees, hears, reads, feels, thinks and eats is grist for his literary mill. And what a wonderful time he has—and gives us—in telling us of what befalls the always grateful Harry Golden. His nostalgia for his East Side past is as *Schmaltzy* to us as to him. He is proud of his Jewishness, particularly its Galician origins. He is equally proud of his Americanism, particularly of the socially minded and courageous and visionary men and women who have opened up the gates of opportunity for all people, including rotund little *Galitzeaners* like himself.

Being Jewish and human, much of his pride is reserved for his fine sons, for his father, for his Uncle Koppel; there are unique qualities in them as Golden tells of them. Only in America could this great thing and that happen to him and them.

There are spitting and chawing portraits of New York Mayor William J. Gaynor, of whom it was said by the opposition, "Nothing that does not concern him is too difficult for his brain"; of district attorney William Travers Jerome, who said to his own people, "When I look around in the clubs of social position I have not yet found a single man who, from the point of view of civic honor, is worthy of a decent burial"; of Billy Graham, who said to Golden, "I will say this about Jews and all other non-Christians; we must lead millions of Gentiles to Jesus Christ, who then by their example of love will eliminate the need for evangelists; each Christian by the manner of his living will be a missionary himself."

There are innumerable passages that should be quoted in this richly human book. For, as Golden draws from the people around him the sparks of life, he imparts in greater and inspiring measure the warmth and glory of a memorable personality. Only in America could such a man succeed with *Goyim* as well as Jews.

KOPTIC COURT, by Herbert D. Kastle. Simon and Schuster, Inc., 343 pp. $4.50.

Reviewed by BENJAMIN WEINTROUB

Some fifteen years before the author gathered his characters into "Koptic Court"—a six-story apartment building in Brooklyn, New York— it was built by Harold Koptic, a Russian Jewish immigrant; its construction was a terminal step in his tortuous march toward material prosperity. Koptic Court was then situated in an area "with a heavy Italian population and a growing Jewish population." The economic debacle of the country in the late twenties destroyed Koptic's ownership of his property and, shortly thereafter, the owner himself. That neighborhood steadily deteriorated and the structure, no longer new, attracted a tenantry which consisted mainly of the lower middle-class Jews.

In this building Kastle housed several families, each with problems of its own, and each interesting for the uniqueness of one or two of its members. Into the drabness and sameness of their lives Kastle introduces circumstances and yearnings that compose the substance of his book.

There are Eli Weiner, middle-aged, dress-manufacturing goods executive who seduces his son's girl friend; Elliot Wycoff, bachelor, on the staff of a publishing house, incessantly in an agonizing struggle with his homosexual impulses; Paula Teck, happily married but eternally brooding and hating Germans and all things German because of the horrors of her experiences, when she was a girl of fourteen, in a Nazi concentration camp; the sophisticated Maston couple—he a Gentile, she an "emancipated" Jewess, struggling for adjustment among themselves and with the outside world; Louis Schimler, a teen-ager suffering from acne and sick with fear that he will be perennially unacceptable for a normal companionship with boys and girls of his age; and there are others—the Negro superintendent of Koptic Court, to whom slowly comes a bitter appreciation of the complexities of racial injustices and prejudices because of his loyalty and devotion to his wayward son.

No character in this book is content with his environment, and no one is intent upon coping with or transcending it until, perhaps, the catastrophic denouement—the blowing up of the Koptic Court by the frustrated and deranged adolescent, Louis Schimler as an act of vengeance for fancied wrongs to his social life.

In the ruins of the fire-swept apartment building lie dead, among other tenants, the Schimler boy, who threw the dynamite into the incinerator, the son of the Negro superintendent, and several relatives of the characters in the book. The central figures in the tragedy survive—some to better appreciate their relationships with each other; others to lose repressions and fears that made for perverted grasp of their problems; and some to carry on, suffering the consequences of their former Koptic Court experiences and actions.

Koptic Court is racily done and easy to read. The chief figures in the book are, on the whole, familiar ones, but, nonetheless, well realized. I doubt, however, whether Kastle's method in engineering a violent end for his story and thus attempting to resolve the various problems posed in the volume—anti-Semitism, intermarriage, the effects of illicit love, etc.—is altogether convincing. "Endings" of the type delineated in *Koptic Court* make for exciting reading, but their cumulative effect is unsatisfying as well as unduly melodramatic.

. . . The Decalogue Journal has been an eloquent and articulate medium in alerting the profession to inroads upon the rights of the individual . . .

—Thomas C. Clark, Associate Justice of the United States Supreme Court

JUDGE HARRY M. FISHER, AN OBITUARY

In the passing of Judge Harry M. Fisher, this community lost its finest Jewish citizen, an outstanding member of the judiciary, a brilliant lawyer, and a dedicated and devoted member and friend of The Decalogue Society of Lawyers.

Only five months ago, as the principal speaker at an Israel bond rally sponsored by our Society, the late Judge directed most his remarks to the historical background, significance, and the future that may be envisaged for the organization of which he was a charter member. This address will appear in a near issue of The Decalogue Journal.

Honored throughout the years by the Bench, Bar, and all the important Jewish groups of Chicago and the Middle West, the Judge was especially proud of the distinction conferred upon him by his fellow members of The Decalogue Society of Lawyers of its Annual Award of Merit in 1952.

Judge Fisher was born in Lithuania January 1, 1882. His parents emigrated here in 1893. He was a newsboy after school hours. Later, while attending evening classes at the Kent College of Law, he worked in a capmaker's shop. He was graduated from Law School in 1904 and admitted to the Illinois Bar the same year. He was in private practice until elected a Judge of the Municipal Court in 1912 on the Democrat ticket. He was re-elected in 1918. In 1921 his party selected him for a judgeship on the Circuit Court. He has been renominated and re-elected for the same post, since.

Judge Fisher's contributions to judicial reforms are many and extraordinary. Years before he became a lawyer he was president of the Juvenile Protective League of his district. A keen interest in sociological problems remained with him throughout his forty years on the bench. He attacked the Juvenile Court as constituted more than fifty years ago on the ground that it was a Criminal Court in which the children were deprived of trial by jury. His position was sustained by the Supreme Court of our State. So cogent and learned were Fisher's arguments in behalf of Juvenile Court reforms, that years before Fisher ascended to the Bench the then Judge of the Juvenile Court, Julian W. Mack, prevailed upon him to write a new act which Fisher completed in 1906. This Act was adopted by the Illinois Legislature in 1907; throughout the country it is still a model for similar legislation. Shortly after, Fisher wrote a handbook on Juvenile Court Practice. At the request of Judge Lindsay of Colorado he rewrote the Juvenile Court Law of that state.

No annals of American Jewry may be written without recording the contributions to their welfare by Judge Harry M. Fisher. "Nothing Jewish is alien to me," was the refrain of the Judge's attitude toward his religious brethren. A Zionist while still a youth (he was president of the Chicago Zionist Organization in 1931) Fisher was an uncompromising believer in the creation of an independent Israel nation. His dream of a home for World Jewry dates from the time of the Balfour Declaration in 1917 and before.

Judge Fisher will be mourned by the lawyer and layman alike; an individual of tremendous legal erudition, he was indefatigable in his efforts to improve the practice of the law. His loss will be felt long and keenly by communal agencies in this city concerned with the lot of the Jew, both here and abroad. He preached aid to the stricken fellow co-religionists long before Hitler's holocaust destroyed millions of Jews. With the dawn of Israel's independence some eleven years ago, Judge Fisher addressed hundreds of rallies, meetings, and gatherings mobilizing public opinion for succor and support of the new State. He was ever on the firing line for the good of Israel which, he often declared, is fashioning and practicing its laws after the greatest country in the world, the United States of America. —Editor

ABRAHAM FELDMAN

Member Abraham Feldman, President of the Chicago District Waterways Association, and President of Lake-River Terminals, Inc., Berwyn, Illinois, spoke on January 5th at St. Louis, Mo., on "The St. Lawrence Seaway, our Fourth Sea Coast." Also shown by Mr. Feldman was a film entitled "Our Fourth Sea Coast."

DONALD S. LOWITZ

Member Donald S. Lowitz resigned as assistant United States Attorney in charge of the civil tax section where he served for nearly five years. He will resume the practice of law with his father Leo H. Lowitz at 100 N. La Salle Street under the firm name of Lowitz, Vihon & Lowitz.

MICHAEL F. ZLATNIK

Member Michael F. Zlatnik, State Representative Eighth Illinois District and president of the Northwest Home for the Aged, and his mother Frieda F. Zlatnik, were honored at a dinner on December 7th for their part in raising the sum of fifty thousand dollars to help pay off the Home's mortgage.

MATILDA FENBERG

Member of our Board of Managers, Miss Matilda Fenberg, addressed recently, in Columbus, and Findlay, Ohio, several women professional and business groups on "Women In Business In Our Own Country."

JUSTICE BRISTOW . . .

(*Continued from Page* 17)

critics with its customary dignity. However, with the eyes of the public focused on that Court, the Bar and the Bench must stand steadfast in its defense. We must fight the mud-slinging of our citadel, for we know well that our system of government is no stronger than our courts, and courts are no stronger than the strength of the public confidence in them. Disrespect for law and for the courts is the breeder of many of our domestic and international ills; whereas a respected and strong judiciary not only improves the calibre of government but insures the perpetuation of our concept of individual freedom under law —our most potent weapon against totalitarian nations. Maintenance of that freedom is essential to the future of free peoples everywhere.

Tonight with the Bench and the Bar breaking bread together to help one of democracy's vanguards—Israel—it is fitting that we pay tribute not only to the ideal of individual freedom under law, but to those dedicated to protect it. In the words of Emerson:

For what avail the plough or sail
Or land or life, if freedom fail.

. . . The consistent sponsorship of The Decalogue Journal adds, in my opinion, stature and luster to The Decalogue Society of Lawyers . . .

Judge Henry M. Burman at Justice George W. Bristow dinner at the Covenant Club on October 15th.

BRIDGE TOURNAMENT

Member Samuel Berke, master in chancery Superior Court, is chairman of The Chicago Bar Association annual Bridge Tournament which commences on February 19th in The Chicago Bar Association quarters, 29 So. LaSalle Street. Play is limited to members of The Chicago Bar Association.

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